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May 10, 2006

**VIA FACSIMILE**

Mitch Sorensen  
2871 W. 2500 N.  
Moore, ID 83213

Dear Mitch:

Enclosed is a first rough draft of a possible letter to Nick Miller. We will look forward to your further input and suggestions.

Yours very truly,



Kent W. Foster

Enclosures

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May 10, 2006

Nick Miller  
Water Distribution Section  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098

RE: Water District 34 - Water Master Duties

Dear Mr. Miller:

We are writing this letter at the request of our clients, Seth Beal, Keith Waddoups, Jay Vaughn Jensen, Harvey Walker, Darrell McDonald, Mitchell Sorensen, Charlie Huggins, Rick Reynolds, Dean Anderson, Eric Aikele, Preston Bell, Joel Anderson and Kent Harwood, pursuant to their understanding of your request to them to supply their recommendations with respect to proper administration of water rights in Water District No. 34. These clients have asked us to first express their appreciation for the Department's prompt response to their initial letter of March 17, 2006, the work already done by staff members in investigating the circumstances, and the recent meeting held in Boise where they received the opportunity to express themselves verbally and discuss many of their pending concerns.

We offer for your review and consideration the following recommendations:

1. We believe the first and most important effort would be the preparation of a complete list of all water rights authorized for diversion and use within Water District No. 34, together with their respective priority dates, amounts and points of diversion from the public source of supply. This list should include all rights decreed in the SRBA and all rights licensed independently of the SRBA, such as flood or highwater (late priority) rights and recharge rights. If this list were posted on the Internet, perhaps with ongoing information regarding natural flow and storage supplies, it would be very helpful to the water users.
2. We recommend that the Water Master and his deputies be properly instructed and trained in the appropriate location (the proper point of diversion), correct method and frequency

for measuring and recording each diversion. If there are not satisfactory measuring devices at each such point, we believe the Water Master should refuse to deliver water until one is properly installed. Under Rule , the Water Master and his deputies need to be instructed how to determine when there is excess water, and how deliveries of such excess water should also be measured, recorded and assessed.

3. Because we believe it will take time and effort to properly instruct and train the Water Master and his deputies in their duties, we recommend that for some period of time, preferably a couple of years or more, qualified personnel of IDWR make random visits and inspections at least every two weeks to verify accurate measurements are being made at the proper locations, with the proper frequency and are also being recorded appropriately. Because of the need to build confidence in the performance of these crucial duties, the above named water users would like to employ the services of an experienced consultant to also make random inspections and gather information to verify the correct procedures are being followed and accurate information is being gathered. We recommend that these water users, (and any other groups who may desire to do the same) or rather their consultant, be given necessary authority to access all points of diversion and measuring devices for such purposes.
4. We recommend that the water district functions be completely separated from and kept independent of irrigation district functions. We recommend that water district personnel not also be employees of the irrigation district. While we believe there must be cooperation between the two entities and their deputies, employees and staff, we strongly oppose the dual employment. While the irrigation district is the holder of the storage rights for storage of water in the Mackay Reservoir, and its allocation and distribution among the lands of the district, we believe that under Idaho Code § 42-105, the District 34 Water Master is responsible for keeping track of storage commingled with the natural flow of the river and accurately measuring the same from the river into the appropriate diversion facilities so appropriate amounts of both storage and natural flow are delivered, measured and recorded.
5. We strongly urge IDWR to do everything possible to ensure that the Water Master and his deputies apply the correct rules and methodology consistently throughout the entire water district. In other words, the same rules must be applied to rights delivered above Mackay Dam as are applied to deliveries made below the Dam.
6. As we understand it, there are some 65 diversion points above Mackay Dam and 23 below. In addition, there are all the diversions on Antelope Creek, for the Timberdome system, and then the other groundwater diversions by wells. If the Water Master and deputies are not also trying to perform duties as ditch riders for the irrigation district, the

duties may require two people (Water Master and/or deputies) above the dam, one below, one for Antelope Creek, one for Timberdome, and one for the wells. We have no objection to combining portions of such assignments so that the fewest number of employees is required. But, we do think it is extremely important for there to be enough district employees, without any dual responsibilities to the irrigation district, to properly and accurately perform all the measurements with the appropriate frequency and record all the required data. We recommend that the budget conform to the needs for proper administration, measurement and record keeping, and not the reverse.

7. The location of advisory board meetings should be rotated between Mackay and Arco. The middle school in Arco can probably be used as an acceptable meeting place and we understand there is meeting hall in Mackay that can perform the same function. There needs to be a regular schedule for such meetings and adequate public notice of all such meetings so all water users within District 34 who wish to attend may do so.

We will very much appreciate your consideration of these recommendations and would be happy to meet with you to discuss them in further detail as desired.

Yours very truly,

Kent W. Foster